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Utah Supreme Court

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Nielsen, Conder and Hansen; Dean E. Conder; Attorneys for Defendant-Appellant;
Bell & Bell; Attorneys for Plaintiffs-Respondents;

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IN THE SUPREME COURT OF THE STATE OF UTAH

HOMER W. HANSON and
BETH P. HANSON, his wife,

Plaintiffs-Respondents,

— vs. —

BEEHIVE SECURITY COMPANY,
et al.,

Defendant-Appellant.

Case
No. 9682

BRIEF OF APPELLANT

Appeal From Judgment of the Third District Court
for Salt Lake County
HONORABLE JOSEPH G. JEPSON, Judge

NIELSEN, CONDER AND HANSEN
DEAN E. CONDER
510 Newhouse Building
Salt Lake City, Utah
*Attorneys for Defendant-
Appellant*

BELL & BELL
J. RICHARD BELL
303 East 2100 South
Salt Lake City, Utah
Attorneys for Plaintiffs-Respondents

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— vs. —

BEEHIVE SECURITY COMPANY,
et al.,
Defendant-Appellant.

Case
No. 9682

BRIEF OF APPELLANT

STATEMENT OF THE CASE

This is an action to determine the validity and effect of a real estate mortgage entered into between Willard J. Stringer, Viola Stringer and Beehive Security Company.

DISPOSITION IN LOWER COURT

This case is an appeal by the Defendant, Beehive Security Company, of the judgment entered April 6, 1962, in Civil No. 132132 of the District Court of Salt Lake County by Judge Joseph G. Jeppson wherein the

court decided that the mortgage entered into between Willard J. Stringer, Viola Stringer and Beehive Security Company was cancelled, annulled, rescinded and held for naught.

STATEMENT OF FACTS

On August 1, 1961, the Respondents went to the office of Lothaire Rich, a real estate broker and lawyer, to make a real estate transaction. This transaction was to be the exchange of Respondents' nine four-plexes and one home for a promissory note owned by Bonneville Securities Corporation. According to the Earnest Money Receipt and conversation between the Respondents and Lothaire Rich, their lawyer (TR-9), the Grantee in the conveyances was to be Bonneville Securities Corporation (R-28).

Also present at Mr. Rich's office were Willard J. and Viola Stringer and Boyd Fullmer, the President of Bonneville Securities Corporation (TR-5). Sometime prior to the actual closing of the transaction the question was asked what Mr. Stringer was doing there at that time (TR-21), and Mr. Rich in the presence of the Respondents said that Mr. Stringer was getting part of the property (TR-22).

At the time the deeds were signed by the Respondents they were aware that the name of the Grantee had not been filled in (R-29), (TR-7), (TR-32), and they were also aware that part of the property was to go to the Stringers (TR-22 also TR-59). Respondents told Mr. Rich to

fill the Grantee blanks with the name of Bonneville Securities Corporation prior to the delivery of the deeds (R-29). When questioned as to the reason for the Grantee's name not being filled in, Mrs. Hansen replied: "Because we had a whole bunch of big important men there, and they seemed to know what they were doing" (TR-33). Her husband, Mr. Hanson, was at this time a licensed real estate salesman for Riddle, Inc. (TR-3, 4) and the owner of a substantial amount of property.

Sometime after Respondents signed the deeds with the Grantee left blank, the names of Willard J. and Viola Stringer were put in as Grantees of the property located in Davis County, State of Utah, and described as:

Beginning at the Southeast corner of Lot 60, KIRKHAVEN SUBDIVISION, Plat D, a subdivision of part of the Southwest Quarter of Section 19, Township 2 North, Range 1 East, Salt Lake Base and Meridian; thence North 0°19' West 94.30 feet; thence South 89°53' West 140 feet; thence South 0°19' East 96.58 feet; thence North 88°57' East 140 feet to the point of beginning.

(R-29)

On August 2, 1961, Willard J. Stringer received a loan of \$3,000.00 from Appellant, Beehive Security Company, on a promissory note secured by the above property. At this time the deed was filled in with Willard J. and Viola Stringer as Grantees, and Beehive Security Company did not know and had no reason to know that the deed was not valid and complete.

On August 4, 1961, the deed and mortgage was sent to the County Recorder's Office of Salt Lake County for recording (R-29). The recorder's office would not record the deed and mortgage because the property was located in Davis County. On August 7 at 11:05 a.m. the deed and mortgage were recorded in Davis County. But prior to this, at 8:30 a.m. on August 7, 1961, a lis pendens was filed on this same property in Davis County.

ARGUMENT

POINT I.

A GRANTOR WHO ENTRUSTS A DEED, WITH THE GRANTEE LEFT BLANK AFTER HE HAS SIGNED IT, TO HIS AGENT WITH EXPRESS PROVISIONS AS TO HOW THE GRANTEE'S NAME IS TO BE FILLED IN CANNOT DECLARE SAID DEED VOID IN REGARD TO A BONA FIDE PURCHASER BECAUSE A DIFFERENT GRANTEE THAN THE ONE AUTHORIZED WAS PUT IN THE DEED.

The present case presents the classic example of two innocent people suffering because of the wrongful act of a third person. In such cases the modern trend of the law is to protect the person who is not responsible for allowing the misdeed to take place, or better said to shift the loss for the wrongful act to the person who enabled the third person to cause the loss. This line of reasoning is supported by *Tiffany Real Property*, 3rd Edition, Sec. 969, which states:

“In case a blank as to the name of the grantee is filled by a person who has no authority for the

purpose, either oral or in writing, or it is filled in a manner contrary to the directions of the grantor, the conveyance is, it is agreed, invalid as regards a person who is aware of the circumstances of the transaction. As regards an innocent grantee or purchaser, on the other hand, it might frequently be valid, on the grounds of estoppel, provided he least pays value. If the grantor chooses to place in the hands of another person an instrument duly signed and sealed by him, but which is otherwise in an incomplete state, and such other exceeds his authority in making the instrument apparently complete, the grantor, and not an innocent purchaser, should be the one to suffer on account thereof. The grantor should be estopped, in such case, to deny that the instrument is his act and deed.”

And in the 1960 Supplement to *Thompson on Real Property*, Sec. 4232, this is stated more strongly:

“One entrusting an incomplete instrument to which he has affixed his signature to another to be completed and delivered is bound to anyone who relies in good faith on the genuineness of such instrument, although the person entrusted has exceeded his authority.”

This type of reasoning especially applies to the fact of this case. Here we have sophisticated owners of nine dwelling units. One of the respondents is a registered real estate salesman (TR-3). They have an attorney acting for them, and they know the deeds were left blank as to the grantee when they signed them, but they tell their lawyer to put the Bonneville Securities Corporation as grantee before delivery. The act of putting in this name would have taken only a few minutes. Why, if it

was so important to them, the respondents did not put the name of the grantee in themselves, if they knew who the grantee was, we can only speculate about. Perhaps a few minutes is an inordinate amount of time to spend in making a transaction complete after waiting in an attorney's office an entire afternoon (TR-4). The point of the matter, however, is that the Respondents could have easily protected themselves. They knew whom they wanted to be grantees. Their action in entrusting the blank deeds to their agent after they were signed can only lead to the conclusion that they should suffer the loss of their own impatience or negligence. They controlled the transaction. The Appellant did not know the grantee had been improperly filled in — nor did it have any cause to know that the instrument at one time was incomplete. The deed was complete and regular when the loan was made, and at the time it was accepted as security for the loan there had been no *lis pendens* or notice given of any irregularity.

Thus far in Utah the particular facts of this case have not been adjudicated. In *Burnam et al vs. Eschler*, 116 U. 61, 208 P. 2d 96 (1959) the question before the court involved the technical question of re-execution and re-acknowledgment if the grantee name was filled in after the first signing of the deed by the grantor. In this case, the court referred to *Beatty v. Shelly*, 42 U. 592, 132 P. 1160, 1913 and also to *Utah State Bldg. & Loan v. Perkins*, 53 U. 474, 173 P. 950, 1918 for authority to the proposition that:

“ . . . if the name of a grantee is inserted by a party who never legally obtained possession of the

instrument nor obtained authority from the grantor to complete the instrument no deed comes into existence.”

In the *Beatty* case the party relying on the blank deed wrongfully obtained possession of it and placed his own name on it as grantee. He never was a bona fide purchaser. The present case is entirely different in that the Appellant was a bona fide purchaser, and the deed was never wrongfully taken from the possession of the Respondents. They gave it to Rich in order to consummate the transaction. In the *Perkins* case the person relying on the blank deeds was not a bona fide purchaser, but the very person who filled the deeds in. Also, the deed was illegally taken from the grantor. In the present case both of these things are different. The Appellant is a bona fide purchaser, the deed was rightfully put into its possession.

Also in the *Beatty* case there is a general statement which states:

“Admittedly a paper purporting to be a deed, but which is blank as to grantee, is no deed and is ineffective as a conveyance while the blank remains. See cases collected at 32 ALR 737 and 175 ALR 1294.”

In the present case the deed was not blank at the time it was given to a bona fide purchaser, so that the general statement cited above does not apply. However, in pursuing the general references in 32 ALR 737, the case of *Guthrie v. Field*, 85 Kan. 58, 116 P. 217, 37 LRA (N.S.)

326, 1911 is cited by the annotator, and the case gives an excellent discussion of the better law in regard to a bona fide purchaser of a deed left blank as to the grantee:

“Guthrie on the other hand, by intrusting Field with the blank deed, gave him the power to make a perfect record title in any one he might choose. Guthrie intended that Field should fill in and deliver the deed, but only upon certain conditions. Guthrie reposed confidence in Field that he would act in accordance with his instructions, knowing that, if he did not, some innocent person might be misled. Field delivered the deed contrary to his instructions, and the consequence followed that might have been anticipated if he were to prove unfaithful — a stranger to the transaction parted with his money having every reason to suppose he was obtaining a good title. Under these circumstances, the loss must fall upon Guthrie rather than upon Riffie . . .

“. . . One who arms another with such uncontrollable power must know that, if his chosen agent shall prove dishonest, that is likely to happen which in fact happened here, and if such result follows, it must be regarded as the consequence of his own imprudence. In acknowledging a blank conveyance before an officer, a grantor in effect declares it to be a deed, which it is not, so long as its terms are incomplete. Having purposely put forth his solemn declaration that he has signed the instrument as a complete deed, when he has not in fact done so (expecting the custodian to find a purchaser, fill in the blank, and effect a transfer of title), he is answerable for the consequences if another innocently suffers loss through relying upon such assurance, and he cannot avail himself of the plea that a blank deed is no deed.”

Also in 175 ALR 1300 there are a series of cases where the courts have held that the grantor cannot complain after signing a deed in blank and then giving it to an agent to later fill in the blanks if the act was improperly done and the holder is now a bona fide purchaser. The court in *Edmonson v. Waterston*, 342 Mo. 1082, 119 SW2d 318, 1938, states the reasoning excellently:

“If plaintiff (wife) were permitted to have the deed set aside in this case, many titles to real estate would be in a precarious condition. No examiner of an abstract would be safe in informing his client that he had good title. The widow of a grantor of the title could come into court and say: I signed the deed in blank; my husband asked me to do so because he was selling the property, but I never acknowledged the deed; the property was sold to the wrong party, and my husband sold it for more than the consideration mentioned in the deed. Such a rule would play havoc with real-estate titles. Under the authorities and established law this cannot be done.”

It is true in these cases that the opportunity for trouble is enhanced because the grantor complaining is the wife of the agent who exceeded his authority in filling in the blanks. But the reasoning is equally applicable to parties other than husband and wife — and the possible damage to titles is just as great.

The possible mischief that could be wrought to the titles within the State of Utah if the Respondents' contention is adopted is enormous, and should not be allowed to happen.

POINT II.

THE AUTHORITY OF AN AGENT TO EXECUTE A CONTRACT WITHIN THE STATUTE OF FRAUDS FOR HIS PRINCIPAL NEED NOT BE IN WRITING.

The problem of the agent's authority being in writing to satisfy the Statute of Frauds has been considered in the case of *Guthrie v. Field*, supra, and decided that :

“... the better rule is that authority may be given by parol to insert the name of a grantee in a deed, even after delivery.”

But there appears to be divided authority on this problem. In California, the cases of *Upton v. Archer*, 41 Cal. 85, 1871, and *Trout v. Taylor*, 220 Cal. 652, 32 P. 2d 968, 1934 hold that the authority of the agent must be in writing in order to satisfy the Statute of Frauds. In Utah, however, the Supreme Court has held that absent a statute requiring that the agent's authority be in writing a contract under the Statute of Frauds signed by an agent will not be void. See *LeVine, et al. v. Whitehouse, et al.*, 37 U. 260, 109 Pac. 2, 1910. Section 25-5-9, UCA 1953, gives an agent authority to sign for his principal to satisfy the statute of frauds. No mention is made in the statute that his authority need be in writing. There appears to be no other reference to the need for the agent's authority to be in writing, so that the *LeVine* case still expresses Utah law on this subject.

CONCLUSION

In conclusion, Appellant respectfully submits that the mortgage on the contested property be held valid, and that the judgment of the lower court be reversed.

Respectfully submitted,

NIELSEN, CONDER AND HANSEN

DEAN E. CONDER

510 Newhouse Building

Salt Lake City, Utah

*Attorneys for Defendant-
Appellant*